IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 250 OF 1996

The State of Maharashtra ... Appellant
(Org. Complainant)

Versus

Dilipkumar Prabhudayal Mangla)
of M/s. Hotel Maharaje,)
Tika No.13, S.No.126,)
Jambhalinaka, Thane.)..Respondent
(Org. Accused)

Shri B.H. Mehta, A.P.P. for the Appellant/State.
Respondent absent, though served.

CORAM: S.K.SHAH,J.
DATE : 22nd December,2004

ORAL JUDGMENT :

1. The prosecution has field this Appeal against the order of acquittal passed by the Chief Judicial Magistrate, Thane, in R.C.C. No. 301 of 1993 whereby the respondent-accused was acquitted of the offences

punishable under Section 7(v) of Prevention of Food Adulteration Act, 1954 read with Section 29 of Prevention of Food Adulteration Rules, 1955 and punishable under Section 16 of the Prevention of Food Adulteration Rules.

2. The complaint was filed by the Food Inspector alleging that on 13.5.1992 at 3.00 p.m., he visited the Hotel of the accused situated at Jambhalinaka, Thane, belonging to the accused. He purchased 600 gms. of vegetable rice Pulav at the price of Rs.41/-. He divided 600 grams of the sample in three equal parts of 200 grams in clean, dry and empty glass bottle and sealed it. He sent the samples to the Public Analyst who reported that the sample contained extraneous Synthetic dye sunset yellow FCF-cormosinedye which was in contravention of the Prevention of Food Adulteration Rules. Therefore, the complainant filed the complaint.

3. The accused pleaded not guilty to the charge levelled against him. His defence was that the quantity of sample collected by the complainant was insufficient and that 600 grams of vegetable rice Pulav was the remaining quantity.

4. The evidence that was led before the learned

Magistrate was that of Food Inspector - complainant, the panch witness who turned hostile and the Assistant of the Food Inspector who accompanied the Food Inspector at the time of the incident.

5. The learned Magistrate passed the order of acquittal on the ground that there was no reference to the plastic mug in which the sample was collected and, therefore, there was violation of Rule 14 of the Prevention of Food Adulteration Rules. He further held that there was no evidence to show that the complainant had placed the seal on the cork of each bottle and that there was violation of Rule 16 of the Prevention of Food Adulteration Rules. He also further held that there was non-compliance of Section 11(1)(c)(i) and Section 11(1)(c)(ii) of the Act which was mandatory. He also further held that the consent which was accorded by the Joint Commissioner for prosecution of the accused was without any application of mind. On all these counts, he acquitted the accused.

6. The learned A.P.P. took me through the evidence and the judgment of the trial Court and he contended that there was no violation of the Rules.

7. On examination of the evidence, it is found that

the bottle in which sample of 200 grams of Pulav was collected was not sealed as required by the provisions of Rules 14 and 16 of the Prevention of Food Adulteration Rules. There was also no evidence to show that the plastic mug in which the sample was collected before transferring into the bottles was cleaned, dried and was empty. This is also in contravention of Rules 14 and 16 of the said Rules. The provisions of Rules 14 and 16 are mandatory and non-compliance thereof will result in the order of acquittal.

8. The order of acquittal passed by the learned trial Court was proper. Consequently, I do not find any merit in this Appeal.

The Appeal is, therefore, dismissed.

(S.K.SHAH,J.)